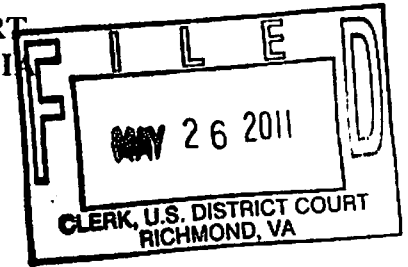


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division



BRIAN PAUL ENGEL,

Plaintiff,

v.

Civil Action No. 3:11CV157

SHERIFF FRANCIS, *et al.*,

Defendants.

MEMORANDUM OPINION

Plaintiff, a Virginia inmate, submitted this action and requested leave to proceed *in forma pauperis*. The pertinent statute provides:

In no event shall a prisoner bring a civil action [*in forma pauperis*] if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C. § 1915(g). Engel has at least three other actions that have been dismissed as frivolous or for failure to state a claim. *See, e.g., Engel v. Francis*, No. 3:09CV586, 2011 WL 797244, at *3 (E.D. Va. Feb. 25, 2011); *Engel v. Francis*, 3:09CV585, 2010 WL 5300888, at *4–5 (E.D. Va. Dec. 20, 2010); *Engel v. Francis*, 3:10CV22, 2010 WL 4394285, at *3 (E.D. Va. Oct. 26, 2010). Engel's current complaint does not suggest that Engel is in imminent danger of serious physical harm. Accordingly, by Memorandum Order entered on April 12, 2011, the Court denied Engel's request to proceed *in forma pauperis* and directed Engel to pay the full filing fee within eleven (11) days of the date of entry thereof.

Over eleven (11) days have elapsed since the entry of the April 12, 2011 Memorandum Order. Engel has not paid the filing fee. Instead, Engel filed a motion for relief under Federal Rule of Civil Procedure 60(b) wherein he asserts that the three strikes provision of § 1915(g) is unconstitutional.¹ Engel fails to advance any persuasive argument that § 1915(g) is unconstitutional. *See Polanco v. Hopkins*, 510 F.3d 152, 156 (2d Cir. 2007) (joining the Fifth, Tenth, Ninth, and Eleventh Circuits in upholding the constitutionality of § 1915(g)). Engel's original Rule 60(b) Motion (Docket No. 5), Amended Rule 60(b) Motion (Docket No. 8), and his Motion for the Appointment of Counsel (Docket No. 2) will be DENIED. The action will be DISMISSED WITHOUT PREJUDICE.

An appropriate Order shall issue.

Date: 5-26-11
Richmond, Virginia

<u>/s/</u> James R. Spencer Chief United States District Judge
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¹ Engel also moved for leave to submit an amended Rule 60(b) motion. Engel's Motion for Leave to Submit an Amended Rule 60(b) Motion (Docket No. 7) WILL BE GRANTED.